

the date of application showing the applicant's financial position." Therefore, Bryan failed to meet the Commission's documentation requirements and cannot be found to have been financially qualified at the time he certified and filed his Application. Likewise, having failed to offer any evidence at hearing, demonstrating his compliance with this requirement, he cannot be found to be financially qualified, currently.

B. The December 12, 1991 Letter From the Greene County Bank Was Insufficient To Meet The Commission's Documentation Requirements.

85. When Bryan filed his Application, he certified as to the availability of a \$ 175,000.00 loan from the Greene County Bank. This was his sole source of funding. Although Bryan obtained a letter, dated December 12, 1991, from the Bank, indicating its willingness to make a loan to him of up to \$ 175,000.00 for purposes of constructing and operating the proposed station, that letter was insufficient to meet the Commission's documentation requirements and, thus, insufficient to support his financial qualifications.

86. The Instructions to Section III of the June, 1989 Edition of FCC Form 301, which Bryan utilized, provide at Item D(3)(d) that applicants relying on commitments from financial institutions are required to have the following documentation on hand before they can properly certify as to their financial

qualifications:

The document by which the institution...has agreed to provide the loan or credit, showing the amount of loan or credit, the terms of payment or repayment of the loan, collateral or security required, rate of interest to be charged, and special requirements (e.g. moratorium on principal or interest, waiver of collateral, etc.)

The explicit specification of repayment terms, collateral and guarantee requirements and any special requirements is necessary to permit the applicant to ascertain whether it can meet such terms, requirements and conditions. In this regard the Instructions to Section III of FCC Form 301 (June, 1989 ed.) specifically provide (at Item B) that in certifying its financial qualifications, "the applicant is also attesting that it can and will meet all contractual requirements, if any, relating to collateral, guarantees, donations and capital investment." In the absence of an explicit specification of those requirements, an applicant has no legitimate basis for determining its ability to meet those requirements and, thus, no legitimate basis for "attesting that it can and will meet all contractual requirements."

87. Other than indicating that it would "be amortized over 15 years at Prime plus 1.50%" and that "the Prime Rate is periodically adjusted and shall "float" during the period of this loan," the December 12, 1991 letter from the Greene County Bank contains no provisions indicating how the loan is to be repaid. The provision that the loan is to be "amortized" over a term of 15 years at a particular interest rate does not constitute the

"terms of repayment." On the contrary this provision merely indicates that the loan would be repaid over 15 years under some unspecified terms of repayment, involving weekly, monthly, quarterly, annual or bi-annual, etc., installments, which might include principal or interest or both. Furthermore, Bryan admitted that, as of January 9, 1992, when he filed his Application, and even as of the date of his January 12, 1994 deposition in this proceeding, it had not been determined how long following disbursement of the proceeds of the proposed loan that repayment of the loan would commence. Neither the Bank's December 12, 1991 letter nor its subsequent letter of September 9, 1993 offer any insight, whatsoever, with respect to the issue of whether and, if so, how often, periodic payments of principal and/or interest are to be made. It is not surprising then that in his written testimony, dated July 1, 1994, Mr. Puckett testified that payments would be made monthly, while Bryan testified that payments would be made quarterly. Indeed, it is precisely this kind of confusion regarding the terms of the loan that the Commission's documentation requirements are intended to avoid.

88. The Instructions to Section III, FCC Form 301, June, 1989 ed., explicitly provide at Item D(3)(d) that "the terms of payment or repayment of the loan" must be specifically addressed in a letter, if it is to meet the Commission's documentation requirements for establishing the availability of a loan for purposes of demonstrating financial qualifications. Lacking, as it does, these critical terms, the December 12, 1991 letter upon

which Bryan relied in certifying is insufficient to support his financial qualifications. The failure to include repayment terms precluded any possibility that Bryan could make any determination regarding his ability to meet those terms, much less to affirmatively certify that he could and would "will meet all contractual requirements" relating to the proposed financing, as the Commission requires. Instructions to Section III of FCC Form 301 (June, 1989, ed.).

89. The December 12, 1991 letter provided that the availability of the proposed loan would be "expressly subject to a lien on all acquired assets as well as a pledge of all stock." Mr. Puckett confirmed that the stock in question was intended to be that of the licensee of the proposed station. Bryan admitted that at the time he approached the Bank he was intending to file as a corporation and that he believes that this intention led to the inclusion of the language in question. However, Bryan did not file as a corporation, but as an individual. Yet, he did not advise the Bank and obtain a new letter prior to filing. In fact he did not advise the Bank that he had filed as an individual until September, 1993. While Mr. Puckett later suggested in July, 1994, that the language included in the letter (written in December, 1991) was intended to "make it clear that incorporation by Mr. Bryan would trigger the need to pledge the stock of any new corporation," that explanation is unpersuasive. This is especially the case in light of Bryan's candid admission that he approached the Bank in September, 1993 to advise Puckett that he

had not filed as a corporation and wanted to clarify that no pledge of stock would be required under such circumstances. If the letter said what Puckett claims it was intended to say, there would have been no need to clarify anything. Of course the letter says nothing of the sort and what the letter says is the most probative evidence of what it means. Aspen FM, Inc., 6 FCC Rcd. 1602, 1602-03 (1991) (documentary evidence is "more probative than" the subjective, "self-serving testimony of witnesses [given] years later.") As such, the conditioning of the proposed loan on the "pledge of all stock" precluded any possibility that Bryan could make any determination regarding his ability to meet that condition, once he determined to file as an individual applicant, much less to affirmatively certify that he could and would "meet all contractual requirements" relating to the proposed financing, as the Commission requires. See: Instructions to Section III of FCC Form 301 (June, 1989, ed.). Indeed, it was precisely Bryan's lack of ability to determine whether he could meet the condition stated in the letter that caused him to approach Mr. Puckett in 1993 with a request for clarification.

90. Bryan testified that he included no expense for debt service during the first month of operation, because he anticipated that no debt service would have to be paid on the bank loan until the second month of operation. The Instructions to Section III, FCC Form 301, June, 1989 ed., explicitly provide at Item D(3)(d) that a "moratorium on principal" is one of the "special requirements" that must be specifically addressed in a

bank letter in order for it to meet the Commission's documentation requirements. However, neither the December 12, 1991 letter from the Greene County Bank nor the Bank's subsequent, September 9, 1993 letter, contains any provision addressing this "special requirement." Likewise, both Puckett and Bryan testified that repayment would be "interest only" for the first year. Yet, the Instructions to Section III, FCC Form 301, June, 1989 ed. also explicitly provide at Item D(3)(d) that a "moratorium on...interest" is one of the "special requirements" that must be specifically addressed in the letter. However, both the December 12, 1991 letter, as well as the Bank's September 9, 1993 letter, fail to address this "special requirement."

91. The failure to address these "special requirements," relating to the terms of loan, precluded any possibility that Bryan could make any determination regarding his ability to meet those requirements, much less to affirmatively certify that he could and would "meet all contractual requirements" relating to the proposed financing, as the Commission requires. See: Instructions to Section III of FCC Form 301 (June, 1989, ed.). The failure of the December 12, 1991 letter to address these "special requirements" also resulted in Bryan's understating his initial operating costs by erroneously excluding debt service during the construction phase, as well as during the first month of operation.

92. When he filed his Application on January 9, 1992, Bryan proposed to divest his interest in WSMG in the event his

Application was granted. At that time and at all times leading up to the present date the assets of WSMG, as well as the stock of its licensee, Burley Broadcasters, Inc., have been pledged to secure a \$ 300,000.00 loan from the Greene County Bank. The Bank's President confirmed that Bryan could sell WSMG, if and only if, the Bank released its security interest in the assets of WSMG and the stock.

93. In December, 1991, the amount owed the Bank totalled approximately \$ 290,000.00. However, the assets of the corporation were valued at only \$ 135,556.90 (including accounts receivable and good will), while total liabilities equalled \$ 314,176.93, exceeding assets by \$ 178,620.03. Furthermore, the costs of furnishings and equipment (before depreciation) listed on the September, 1991 "Statement of Assets and Liabilities" (\$ 103,219.00) significantly exceeded (by 350%) those reported to the State of Tennessee on the 1993 Tangible Property Schedule (\$ 28,797.00), suggesting that the former may well have been significantly inflated.

94. Even if Bryan's contention that accounts receivable and good will are more important in determining the price at which the station could be sold was credited, these assets were valued at only \$ 28,143.94 and \$ 77,850.00, respectively. Furthermore, Bryan was uncertain that accounts receivable would even be included in any sale and stated that he expected the good will developed on WSMG to carry over to the new FM. If such were the case, the sale of WSMG hardly could be viewed as the sale of a

going concern. Under such circumstances and in light of the value placed on the assets of the station, it cannot reasonably be concluded that WSMG could have been sold for anything approaching the \$ 290,000.00 owed on the station at the time Bryan prepared and filed his Application or that it could be sold for \$ 210,000.00, today. This is especially the case in light of Bryan's failure to provide any appraisal of the station's value, either to the Bank or for the benefit of the record in this proceeding. Indeed, given that the \$ 135,556.90 valuation placed on its assets, which included both accounts receivable and good will, there is absolutely no reasonable basis for expecting that the station would have sold for a penny more than \$ 135,556.90. In fact this would be considered an exceptionally good price in today's marketplace. In that regard official notice may be taken of the recent sale price of WJFC(AM) and WNDD(FM), licensed to nearby Jefferson City, Tennessee. This AM daytimer and 6.0 kilowatt FM, together, sold in the Fall of 1993 for only \$ 200,000.00, which price included the real property on which the AM transmitter site was located. (See: relevant portions of BALH-931029GK attached as Exhibit C, hereto -- Official Notice Requested)

95. While Mr. Puckett currently indicates a willingness on the part of the Greene County Bank to permit the sale of WSMG for less than is owed the Bank and to roll over any shortfall into the new loan for the FM, the record reflects that Bryan had had no discussion with the Bank regarding this matter nor received

any such assurance from the Bank, either in December, 1991 or even as of January 12, 1994, the date of Bryan's initial deposition in this proceeding, when questions regarding his ability to sell WSMG were first raised. Furthermore, even had Bryan had such discussions with the Bank, prior to filing his Application, those discussions would have been of no significance insofar as his financial qualifications are concerned, inasmuch as the Bank's December 12, 1991 letter makes no reference, whatsoever, to any sale of WSMG or any willingness on the part of the Bank to roll over any shortfall into the FM loan. On the contrary, the December 12, 1991 letter refers to a loan "up to" and only up to \$ 175,000.00 and only "for the purpose of constructing and operating a new FM radio station in Tusculum, Tennessee."

96. Accordingly, at the time Bryan certified his financial qualifications and filed his Application he had no source of funds available to cover the cost of meeting any shortfall in the sale of WSMG, which he had proposed to divest. Inasmuch as his divestiture commitment was, pursuant to Commission policy, required to be effectuated prior to commencement of operation of the new FM, Bryan would have had to have sufficient funds available to retire the outstanding debt on WSMG prior to commencing operations on the FM, even if WSMG sold for less than the amount owed the Bank. Thus, in the absence of any appraisal, demonstrating that WSMG had a fair market value equal to or greater than the outstanding balance due on the existing loan

and in the face of significant evidence that suggests that it did not, it may not be simply assumed that WSMG could be sold for sufficient funds to retire the outstanding loan. ²/

97. Therefore, given the failure of the December 12, 1991 letter of the Greene County Bank to specify the terms of repayment of the proposed loan, to address the "special requirements" relating to a "moratorium on principal or interest" or a "waiver of collateral" (i.e., the pledge of stock) and given its failure to provide for rolling over any shortfall from the sale of WSMG into the FM loan, it must be concluded that this letter, which was the only documentation which Bryan had in his possession, did not meet the Comission's documentation requirements. Accordingly, the December 12, 1991 letter may not be relied upon by Bryan to establish his financial qualifications. Inasmuch as the proposed loan from the Greene County Bank was the sole source of financing upon which Bryan relied in certifying his financial qualifications, it must be concluded that Bryan lacked any documented source of funding to meet his costs of construction and initial operation.

2. The \$ 135,556.90 valuation placed on the assets of the corporation in the September 30, 1991 "Statement of Assets and Liabilities for Burley Broadcasters, Inc." (SBH Ex. 13) must be deemed the most reliable evidence of record regarding the value of WSMG. To the extent that the record lacks more reliable evidence, any deficiency must be charged against Bryan, as a failure to carry his burden of proof on the issue.

III. Bryan Has Failed To Demonstrate That He Had Sufficient Funds Available To Meet His Costs of Construction And Initial Operation In 1992 Or That He Does Currently.

98. Even if it were concluded that Bryan had met the Commission's documentation requirements and demonstrated the availability of a \$ 175,000.00 loan, such funds would have been insufficient to meet his costs of construction and initial operation in January, 1992, as those costs have been established on the record, and it would be insufficient, today.

99. Richard Mertz attempted, though his testimony, to establish that Bryan's originally estimated costs of construction were reasonable. However, Mertz acknowledged that his conclusion that Bryan's original estimate was "valid at that time" referred to Bryan's total estimate, not to the cost of individual items. Furthermore, rather than attempting to demonstrate that Bryan could have constructed the station that he proposed in 1992, utilizing the equipment he proposed to use, Mertz demonstrates only that a hypothetical station could be constructed in 1994, using some of the same equipment, as well as different and less expensive equipment than that proposed by Bryan. Not only is Mertz' conclusion dependent upon his substitution of different and less expensive equipment than Bryan originally proposed, the record supports the conclusion that Mertz has essentially put together the cheapest package possible in order to meet the "economic constraints" presented by the total funds available to Bryan, without regard for what Bryan may have originally

proposed. 3 /

100. Mr. Mertz had no involvement in the development of Bryan's cost estimates in 1991-92 and did not conduct any investigation to verify what the costs of the individual items proposed by Bryan would have been in January, 1992. Instead, Mertz compiled an "Updated Estimate," in which he either (a) included current prices for items Bryan had originally proposed or (b) substituted different products in lieu of those originally proposed by Bryan.

Items 1 - 19.

101. With regard to the specific items included in his "Updated Estimate," Mr. Mertz indicated that he had made an error with respect to the costs listed for Item 1, the transmitter and exciter, and that the combined listed costs of these two items should be increased by a total of \$ 3,000.00, resulting in a total cost of \$ 22,200.00 for the transmitter and exciter.

102. Mertz included at Item 6 a Hnat/Hindes UltraMod at a cost of \$ 3,000.00. However, Bryan never proposed to purchase this product, but rather proposed an Orban Optimod, which would cost \$ 5,950.00. Thus, it is apparent that Mertz has simply

3. For example, Mertz had no recollection of ever having recommended the use of a Rohn tower, much less installed one. Likewise, he has never utilized a Henry transmitter in any of the numerous facilities he has constructed have been constructed with Henry transmitters, which he acknowledged are at the bottom end of the price scale. Although he sought to downplay the significance of the differences between transmitters, it is inconceivable that buyers would consistently pay significantly higher prices for transmitters that were essentially no different from those costing \$ 10-20,000.00 less.

substituted a different and less expensive product for the one proposed by Bryan in order to give the false impression that Bryan's original estimate was reasonable. However, having offered no evidence demonstrating that an Orban Optimod could have been purchased for the \$ 3,500.00 Bryan budgeted in January, 1992, it must be concluded, based on the record evidence, that Bryan understated the cost of this item by \$ 2,450.00.

103. Mertz included at Item 7 three Tapecaster play-only cart machines for a total cost of \$ 3,585.00. However, Bryan never proposed to purchase any Tapecaster cart machines, but rather proposed to purchase three ITC stereo play-only cart machines, which would cost \$ 6,225.00. Thus, once again, Mertz has simply substituted a different and less expensive product for the one proposed by Bryan in order in this instance to give the false impression that Bryan budgeted more than necessary for this item. However, having offered no evidence demonstrating that three ITC Stereo Play Carts could have been purchased for the \$ 4,000.00 Bryan budgeted in January, 1992, it must be concluded, based on the record evidence, that Bryan understated the cost of this item by \$ 2,225.00.

105. Similarly, Mertz included at Items 9 and 10 two Technics SL100 MKII turntables for a total of \$ 899.90 and two Shure M64 phono preamps for a total of \$ 250.00, where Bryan had proposed two Technics turntables (model unspecified) for a total of \$ 1,250.00 and two Technics Amps (model unspecified) for a total of \$ 400.00. Obviously, Mertz has simply proposed a less

expensive turntable from the same manufacturer and a less expensive preamp from a different manufacturer in order to give the false impression that Bryan budgeted more than necessary for these items.

106. Mertz included at Item 12 a Marti Composite STL package for a total cost of \$ 6,500.00. However, Bryan never proposed to purchase a Marti STL system, but rather proposed to purchase a used Moseley STL package, which would cost \$ 8,250.00, new. Thus, once again, Mertz has simply substituted a different and less expensive product for the one proposed by Bryan in order to give the false impression that Bryan's original estimate was reasonable. However, Mertz' substitution simply highlights the fact that the Marti is a less expensive, if not inferior, product, inasmuch as its new cost exceeds Bryan's used price for the Moseley by only \$ 1,000.00. Having offered no evidence demonstrating that a used Moseley STL system could have been purchased for the \$ 5,500.00 Bryan budgeted in January, 1992, and having offered no evidence that Bryan had an agreement with some supplier, permitting him to purchase the system at that price, it must be concluded, based on the record evidence, that Bryan understated the cost of this item by \$ 2,750.00.

107. Mertz included two Scala MF-950 Minireflectors at Item 13 for a total cost of \$ 640.00. However, Bryan never proposed to purchase this product, but rather proposed to purchase Scala Parareflector antennas, although he inadvertently omitted one of them from his Itemization of Costs. The cost of two new Scala

Parareflector antennas would be \$ 1,260.00. Mertz acknowledged that the Scala Minireflectors included in his proposal are smaller in size, as well as lower in price, than the Scala Parareflectors proposed by Bryan. Thus, once again, Mertz has simply substituted a different and less expensive product for the one proposed by Bryan in order to give the false impression that Bryan's original estimate was reasonable. Having offered no evidence demonstrating that two used Scala Parareflectors could have been purchased for the \$ 500.00 Bryan budgeted in January, 1992, and having offered no evidence that Bryan had an agreement with some supplier, permitting him to purchase these items at that price, it must be concluded, based on the record evidence, that Bryan understated the cost of this item by \$ 760.00.

108. Mertz failed to include a Belar RF Amplifier in Item 16. Bryan admitted that he had obtained a price for a Belar RF Amplifier, but had inadvertently left it out of his Itemization of Costs. Thus, given Bryan's admission that he had intended to include this item, which would cost \$ 850.00, in his equipment proposal, it must be concluded, based on the record evidence, that Bryan understated his cost in this regard by \$ 850.00.

109. Mertz included at Item 18 one Tapecaster stereo cart recorder for a total cost of \$ 1,995.00. However, Bryan never proposed to purchase this product, but rather proposed to purchase an ITC stereo cart recorder, which would cost \$ 3,230.00, if purchased new. Thus, once again, Mertz has simply substituted a different and less expensive product for the one

proposed by Bryan in order in this instance to give the false impression that Bryan budgeted more than necessary for this item. However, Mertz' substitution simply serves to highlight the fact that the Tapecaster is a less expensive, if not inferior, product, inasmuch as its new cost is \$ 500.00 less than Bryan's used price for the ITC. Having offered no evidence demonstrating that a used ITC stereo cart recorder could have been purchased for the \$ 2,500.00 Bryan budgeted in January, 1992, or that Bryan an agreement with some supplier, permitting him to purchase one at that price, it must be concluded, based on the record evidence, that Bryan understated the cost of this item by \$ 730.00.

110. Thus, given the foregoing (paras. 101-9), it must be concluded that the costs of the equipment items originally proposed by Bryan (and identified by Mertz as Items 1-19) have been as established on the record, as follows:

	<u>Actual Cost</u>	<u>Amount Understated</u>
1. Transmitter/Exciter	\$ 22,200.00* #	(\$ 6200.00)
2. Antenna (4 bay)	5,900.00*	(\$ 1400.00)
3. Transmission Line	4,541.60*	(\$ 4091.60)
4. Connectors/Hanging & Grounding Hardware	1,370.00*	(\$ 1270.00)
5. Audio Console	1,750.00*	(\$ 155.00)
6. Orban Optimod	5,950.00**	(\$ 2450.00)
7. 3 ITC Play Cart Machines	6,225.00**	(\$ 2225.00)

8. 120 Carts	588.00*	(\$ 163.00)
9. Technics turntables	1,250.00***	----
10. Technics Amps/cartridges	400.00***	----
11. Microphone/Amp Speakers	495.00*	----
12. Moseley STL Package	8,250.00**	(\$ 2750.00)
13. Scala Parareflectors	1,260.00**	(\$ 760.00)
14. STL Transmission Line	500.00*	(\$ 300.00)
STL Connectors/Hanging & Grounding Hardware	462.00*	(\$ 462.00)
15. Gentner VRC Remote Control	4,137.00*	(\$ 277.00)
16. Belar Stereo Monitor	1,650.00*	(\$ 771.00)
Belar FM Mod. monitor	1,450.00*	(\$ 1450.00)
Belar RF Amplifier	850.00**	(\$ 850.00)
17. Tascam 32 Reel Recorder	1,799.00*	(\$ 599.00)
18. ITC Cart Recorder	3,230.00**	(\$ 730.00)
19. Distribution Amp	425.00*	----
18. 8' Equipment rack	400.00*	(\$ 320.00)
19. Automation Equip.	10,000.00*	(\$ 2500.00)
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	\$ 85,082.60	29,723.60

Source of Price:

* Mertz' "Updated Estimate"
 ** New cost, as established on the record
 *** Bryan's original Itemization of Costs
 # See para. 101, supra.

111. The 10% "package discount" that Mertz applied to the subtotal of the prices that he supplied, was based solely on his experience in purchasing equipment in the past, not based upon

any specific equipment price quotation from suppliers. Thus, having obtained no specific price quotations from suppliers, Mertz was unable to offer anything more than his own expectations that a "package discount" of 10% would be applied. However, it is evident that the prices for the equipment listed on his Updated Estimate were derived from at least four different suppliers and thus did not constitute a single "package." Thus, his expectation is rendered even more tenuous, give its need for the further assumption that suppliers would apply a "package discount," when significantly less than a full "package" of equipment was being ordered. As such, Mertz' 'expectation' that a 10% "package discount" would apply does not rise to the level of evidence, much less reliable evidence, and should be given no consideration in determining whether Bryan has met his burden of proof under the added issues.

Items 20-26.

112. Mr. Mertz included a cost of \$ 16,000.00 at Item 25 of his updated Estimate for the purchase and installation of a 300' tower, based on a 1994 price quote from Walt Stone of American Aviation, Inc. However, as indicated below, this proposal may not be relied upon because it was not available to Bryan at the time he prepared and filed his application and because serious questions remain regarding the appropriateness of the tower proposed for this particular installation.

113. At the time Bryan certified his financial qualifications and filed his Application he had obtained no price quotation,

oral or written, from any tower supplier or construction contractor for the purchase and installation of a tower. Instead, he relied upon a "ballpark figure" obtained in a conversation with someone at Hall Electronics. He is not even certain that Hall sold towers at the time. Accordingly, it must be concluded that Bryan had no legitimate basis for the \$ 18,000.00 he budgeted for the purchase and installation of a 300' tower at the time he certified and filed his Application.

114. Following the filing of SBH's Second Petition to Enlarge Issues on February 15, 1994, Bryan obtained a quote for the construction of a 300' Rohn 45G guyed tower from Walter J. Stone, President of American Aviation, Inc. The quote for the tower, including a 300 mm beacon, was \$ 11,500.00, plus an additional \$ 4,500.00 for installation and \$ 500.00 for the installation of the FM antenna, STL antenna and transmission lines.

115. In his written testimony, Stone indicated: "prior to ordering the tower, I would contact the Rohn Tower Company representative and discuss the installation and ask whether they agree with my proposed use of a 45G tower or whether they would recommend going to the next size tower, the 55G." The maximum recommended height for the Rohn 45G tower is 300 feet, assuming a wind speed of 70 mph. However, if the applicable wind speed were increased to 90 mph, the 45G would be recommended for installations no higher than 240 feet. The Rohn 55G tower could be installed at the higher, 90 mph, wind speed up to 300 feet. The wind speeds listed in the Rohn dealer price list are basic,

not peak, wind speeds. Richard Mertz indicated that whether peak or only basic wind speeds must be taken into consideration would depend on the particular area and situation. Mertz acknowledged that the type of tower and installation must be appropriate to the topography of the area and must enable the tower to withstand climatological extremes in the area where it's located. Referring to the map from the Rohn catalogue, Mertz acknowledged that it shows a 70 mph basic wind speed for a good part of State of Tennessee, but has different shading where the Smokey Mountains are located, along the eastern boundary of the State. This shaded area is intended to represent a special wind region, where abnormal wind speeds can be expected which must be evaluated. Exhibit E-5 to Bryan's Application (Attached as Exhibit B -- Official Notice Requested) reflects the proximity of Bryan's proposed transmitter site to the Great Smokey Mountains and the Tennessee boundary with North Carolina, demonstrating its location within the "special wind region" identified by Mertz.

116. Therefore, given the established facts that: (a) Bryan's proposed transmitter site is located in a "special wind region," (b) Mr. Stone has never constructed a tower for a broadcast station, has never been involved in constructing a tower over 200' tall and his company has never constructed a tower taller than 150 feet, and (c) Mr. Stone has admitted his uncertainty regarding the appropriateness of utilizing the Rohn 45G tower for this particular installation, serious questions remain regarding the appropriateness of the use of a Rohn 45G for a 300'

installation at Bryan's proposed site. Under such circumstances Bryan has failed to demonstrate that Mr. Stone's price quotation, based as it is on a Rohn 45G tower, may be relied upon.

117. As indicated above, it must be concluded that Bryan had no legitimate basis for his \$ 18,00.00 estimate for purchase and installation of a 300' tower. It also must be concluded that it was simply fortuitous that Mr. Stone, who does maintenance for WSMG, happened to be a Rohn dealer with access to a deep discount off the regular dealer price and, thus, was in the position to provide Bryan with a quote in 1994, which was significantly below the norm. (See para. 35, supra.) In any event, Bryan had no such quote in January, 1992, when he filed his application.

Accordingly, in the absence of any proffer of evidence that Bryan could have purchased a 300' guyed tower for \$ 18,000.00 in January, 1992, it must be concluded that Bryan has failed to carry his burden of proof with regard to this aspect of his proposal. If, however, a 1994 quote of Walter Stone is to be relied upon, it should be his quote for the Rohn 55G, given the uncertainty regarding the appropriateness of the Rohn 45G for this installation. Mr. Stone indicated that, if the 55G were recommended by Rohn, the cost to Mr. Bryan would be \$ 13,897.00. He did not indicate whether this price would include the cost of the 300 mm beacon, so an additional \$ 704.00 (representing Stone's cost for the beacon) should be added, at minimum, for a total of: \$ 19,601.00, including tower installation (\$ 4,500) and antenna/transmission line installation (\$ 500).

118. Mr. Mertz included at Item 26 a cost of \$ 3,800.00 for a transmitter building, based on a proposal from Walt Stone of American Aviation, Inc. However, the record reflects that the proposal in question was not prepared until 1994 and that Bryan budgeted \$ 5,000.00 for a transmitter building in 1991, based upon a quotation obtained from a local contractor. Accordingly, the cost that Bryan is required to demonstrate sufficient funds to meet is the \$ 5,000.00 price he obtained in 1991, not a proposal obtained after questions had been raised regarding his financial qualifications.

119. Therefore, given the foregoing (paras. 112-18), it must be concluded that the established costs of the items proposed by Bryan (which are identified by Mertz as items 20-26) would be as follows:

20. Generators	9,000.00
21. Installation (Generators)	8,000.00
22. Equipment Installatin	1,500.00
23. Studio Furniture	800.00
24. Office Furniture	500.00
25. 300 Foot Tower	19,601.00
26. Transmitter Building	5,000.00

	\$ 44,401.00

With the exception of Item 25, which is based on Mr. Stone's quote for a Rohn 55G tower, installed, all of the costs reflected are taken from Bryan's Itemization of Costs.

Other Pre-operational Costs.

120. The record reflects (para. 21, supra.) that Bryan neglected to include the cost of purchasing his proposed

transmitter site. Inasmuch as his agreement with the landowner did not provide either for a lease or for payment of the purchase price over time, this cost would have been incurred by Bryan prior to commencement of operation and, indeed, prior to construction at the transmitter site. Accordingly, Bryan understated his construction costs by an additional \$ 7,000.00, the cost of purchasing his transmitter site.

121. The record in this proceeding also establishes (paras. 46-48, supra.) that at the time he prepared and filed his Application Bryan intended to utilize a microwave studio-transmitter link (STL) to transmit his programming from his studio to his transmitter site. Bryan confirmed at hearing his intention to locate his studio for the proposed Tusculum FM station at the building which he owns and currently utilizes as the studios for WSMG(AM) and that he has an existing 30 foot tower at that location on which he would mount the STL antenna for the studio. The record further establishes that, while a line of sight path between the STL antennas located at the studio and transmitter sites is required, no line of sight path can be obtained between Bryan's studio and transmitter sites due to terrain obstructions. However, Bryan testified that, should he be unable to obtain a line of sight path between his transmitting tower and the existing 30 foot tower at his proposed studio, he would install an intermediate receive/transmit point at another existing tower, which he owns and currently utilizes for a shortwave repeater and which he was confident would provide a

line of sight path to both his studio and transmitter sites. Because he owns the tower, Bryan would not incur any additional rental costs and would only incur the costs of purchasing and installing the equipment necessary for the intermediate receive/transmit point. Consistent with Bryan's proposal to utilize Mosely STL equipment and Scala Parareflector antennas, the cost of implementing the intermediate receive/transmit point would be \$ 9,972.80, plus the cost of whatever amount of transmission line is required.

122. The record reflects that Bryan also failed to budget for: the necessary equipment for pressurization of the transmission line and antenna, which would cost between \$ 50.00 and \$ 295.00, the cost of the nitrogen gas used to pressurize the line and antenna (cost unknown), the cost lightning rods and side lighting package for the tower and the cost of fencing the tower base and guy anchors. He also failed to budget for field testing prior to construction, sales tax on equipment purchased and the freight charges for delivery of the equipment from the manufacturer to his studio and transmitter sites.

123. As indicated at paragraphs 71-74, supra., in determining his estimated initial operating costs, Bryan understated his costs for debt service by \$ 7,737.76, his costs for electric service by at least \$ 1,500.00 and his costs for telephone service by at least \$ 150.00, for a total of \$ 9,387.76 for these three items. From this amount must be offset the sum of \$ 675.00, representing the amount Bryan unnecessarily budgeted for payment

during the first quarter of operation for the purchase/lease of his transmitter site, which, as demonstrated above, should have been budgeted as a preoperational cost of \$ 7,000.00.

Accordingly, it must be concluded that Bryan's total estimated operating cost for the first three months, \$ 37,993.88 (SBH Ex. 15, p. 2), was understated by at least \$ 8,712.76. This sum does not include any installation charges for electric or telephone service.

124. In light of the foregoing (paras. 110, 119-21, 123), the costs of construction and operation of Bryan's proposed station for three months without revenue, as established on the record, may be summarized as follows:

Construction Costs:		
Items 1 - 19	\$ 85,082.60	
Items 20 - 26	44,401.00	

		\$ 129,483.60
Operating Costs:		
Bryan's Estimate:	37,993.88	
Understated Costs:	8,712.76	

		46,706.64
Transmitter Site		7,000.00
Intermediate STL Site		9,972.80

		\$ 193,163.04

The above reflected costs do not include the costs of other equipment that Bryan omitted or equipment that he has on hand, the availability of which is in doubt. Nor do the above costs include sales tax or freight or shipping charges, which the Instructions to Section III of the June, 1989 ed. of FCC Form 301